

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: _____)

AM/NS Calvert LLC)

1 AM/NS Way)

Calvert, AL 36513)

Mobile County, AL)

Permit No. AL0080233)

Consent Order No. [ORDER NUMBER]

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and AM/NS Calvert LLC (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a carbon steel processing mill (hereinafter "the Facility"), known as AM/NS Calvert LLC located at 1 AM/NS Way in Calvert, Mobile County, Alabama.
2. PVS Steel Services (hereinafter "PVS") operates the Hydrochloric Acid Regeneration Plant (hereinafter "HCl Plant") at the Facility.
3. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
4. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in

accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

5. In accordance with ADEM Admin. Code chap. 335-6-6 and the AWPCA, the Department issued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. AL0080233 (hereinafter "the Permit"), to the Permittee on July 30, 2015, effective August 1, 2015. The Permit establishes limitations on the discharges of pollutants from such point sources, designated therein as outfalls DSN001, DSN009 and DSN010, into the Tombigbee River, outfalls DSN002 and DSN003, into Sheppard Lake, outfall DSN004 into an Unnamed Tributary to Sheppard Lake, and outfall DSN007 into Barrow Creek, all waters of the State. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the terms and conditions of the Permit.

6. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants in violation of the limits imposed by Part I.A of the Permit. The effluent violations noted are listed in Attachment #1.

7. Permit Condition Part IV.A.1 requires the Permittee to "develop and implement a Best Management Practices (BMP) Plan which prevents, or minimizes the potential for, the release of pollutants from ancillary activities, including material storage areas; plant site runoff; in-plant transfer, process and material handling areas; loading and unloading operations, and sludge and waste disposal areas, to waters of the State through plant site runoff; spillage or leaks, sludge or waste disposal; or drainage from raw material storage."

8. Permit Condition Part IV.A.5.a. requires the Permittee to maintain at the Facility a copy of the BMP Plan which shall be made available for inspection by representatives of the Department.

9. Permit Condition Part IV.A.5.b. requires the Permittee to maintain a log of the routine BMP inspections at the Facility which shall be available for inspection by representatives

of the Department. The log shall contain records of all inspections performed for the last three years and each entry shall be signed by the person performing the inspection.

10. ADEM Admin. Code r. 335-6-6-.03(1) states: "No person shall discharge pollutants into waters of the state without first having obtained a valid NPDES permit or coverage under a valid General NPDES Permit..."

11. Permit Condition Part IV.A.5.c. requires the Permittee to "provide training for personnel required to implement the BMP and retain documentation of such training at the facility. The documentation shall be available for inspection by representatives of the Department."

12. On August 9, 2017, Department personnel conducted a compliance evaluation inspection of the HCl Plant in response to an anonymous complaint. At the time of the inspection, Department personnel noted that a BMP Plan and site specific inspection records for the HCl Plant were not available for inspection in violation of Permit Conditions Part IV.A.5.a and b. Department personnel also observed and noted the following violations of Permit Condition Part IV.A.1: the HCl Plant's loading area was inadequately maintained; there was a lack of BMP measures in place to prevent or minimize stormwater contact with waste materials, products and by-products; silt fencing installed at the storm water inlets was inadequately maintained; and evidence of sediment discharges in the storm water inlets and ditches around the loading area. In addition, Department personnel observed and noted that the the lined storm water pond ("the Pond") adjacent to the HCl Plant contained red-colored water and an accumulation of solids. As indicated by the Permittee and PVS, the design of the Pond is such that the water is pumped back to the HCl Plant for reuse and/or to the onsite wastewater treatment system operated by another entity for treatment under SID Permit IU414900830. The Department further noted during the inspection staining in the nearby ditch, evidently as a result of previous overflow conditions from the Pond. The Pond was also actively discharging during the inspection, via a leaking valve, into a nearby ditch which drains to outfall DSN004 of the Permit. The Permit authorizes the discharge of non-contact cooling water, water tank effluent overflow, boiler blowdown, demineralizer blowdown/backwash, equipment/vehicle rinse water, emergency fire

suppression water, compressor condensate, and storm water runoff from outfall DSN004. Based on the characteristics of the water in the Pond, as evidenced by the results of samples collected during the Department's August 30, 2017 inspection (noted in Paragraph 13 and listed in Attachment 2), the Permittee discharged process water in violation of ADEM Admin. Code r. 335-6-6-.03(1) and the Permit.

13. On August 30, 2017, the Department conducted a follow-up compliance sampling inspection of the Facility. Department personnel noted the following violations of Permit Condition Part IV.A.1: (1) The Permittee's BMP Plan did not include specific activities at the HCl Plant, as it lacked an inventory of the exposed materials at the HCl Plant and identification of silt fencing as a control measure. (2) Elements of the BMP Plan were not implemented, including: non-stormwater discharges evaluations (Chapter 4.8 of the BMP Plan), annual comprehensive site compliance evaluations (Chapter 5 of the BMP Plan), and quarterly qualitative visual observations of the stormwater discharge (Chapter 6 of the BMP Plan). (3) BMPs were not properly implemented, as there was a lack of good housekeeping in the loading/unloading area and plastic totes with caustic soda near a stormwater drain without secondary containment. The Department further noted that BMP training records for personnel at the HCl Plant were not available for review, in violation of Permit Condition Part IV.A.5.c. The results of samples of the water in the Pond, which were taken during the inspection, indicated a pH of 2.35 s.u. and elevated levels of other pollutants as listed in Attachment #2, indicating that the Pond contained process wastewater in addition to stormwater.

14. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

15. The Department has agreed to the terms of the Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in the Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS OF THE DEPARTMENT

16. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment 3), the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Based on information available to the Department, violations of the Permit, ADEM Admin. Code chap. 335-6-6, and the AWPCA were noted. The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, the condition of the receiving waters, the violations' effects, if any, on the receiving waters, and any available evidence of irreparable harm to the environment or threat to the public.

B. **THE STANDARD OF CARE:** In consideration of the standard of care provided by the Permittee, the Department enhanced the penalty. The Department considered the majority of the violations to be easily avoidable such as, proper development and implementation of the BMP Plan, maintenance of records, personnel training, and maintenance and operation of the HCl Plant such that unpermitted discharges did not occur.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has considered that delayed compliance may have conferred an economic benefit upon the Permittee. The Department does not have complete information

regarding costs for compliance; however, the Department has estimated that avoided and/or delayed costs in failing to properly develop and implement a BMP, failing to properly provide training and maintain records, and failing to properly maintain the HCl Plant such that unpermitted discharges did not occur may have conferred an economic benefit upon the Permittee.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has considered the Permittee's history of previous violations and made a determination that a penalty enhancement is not appropriate.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment #3.

CONTENTIONS OF THE PERMITTEE

17. The Permittee neither admits nor denies the Department's contentions.

18. The HCl Plant is a part of the carbon steel mill acquired by AM/NS from ThyssenKrupp on February 26, 2014.

19. In the steel manufacturing and processing industry, acid regeneration units are often operated by contractors having special expertise.

20. ThyssenKrupp initially contracted with International Steel Services, Inc. (ISSI) to design and operate the HCl Plant. The ISSI contract was assigned to AM/NS upon its acquisition of the mill.

21. In May 2017, PVS acquired certain ISSI operations, including its obligations under the contract to operate the HCl Plant.

22. Under the terms of that contract, PVS has responsibility for operating and maintaining the HCl Plant and for compliance.

23. AM/NS pays PVS and relies on it to operate and maintain the HCl Plant in accordance with applicable regulatory requirements and permits, and in a manner consistent with PVS' specialized knowledge and expertise.

24. Immediately following the August 9 inspection, AM/NS directed PVS to correct violations and deficiencies noted during the inspection. AM/NS also assured that valves at the secondary containment area were closed. Thereafter, AM/NS installed closed ended flanges on the valve outlets to assure that no discharge could occur through the pipes.

25. AM/NS has also installed video equipment to monitor the operation and the containment in an effort to prevent any future violations. AM/NS has increased automation and control measures which are designed to ensure compliance.

26. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desire to resolve and settle the compliance issues cited above. The Department has considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged

herein. Therefore, the Department and the Permittee (hereinafter collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount of fifty thousand dollars (\$50,000) in settlement of the violations alleged herein within **forty-five days** after issuance of this Consent Order. Failure to pay the civil penalty within **forty-five days** after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. All penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee shall prepare and submit to the Department, not later than **ninety days** after the issuance of this Consent Order, an Engineering Report that identifies the potential causes of noncompliance and summarizes an investigation of the changes necessary for the Permittee to achieve and maintain compliance with the Permit, ADEM regulations and the AWPCA. The Engineering Report shall include a Compliance Plan with a schedule for implementation of necessary corrective actions and cost of such necessary corrective actions, if known. At a minimum, the Permittee shall consider each of the following in making its investigation: the need for changes in maintenance and operating procedures (including implementation of proper BMPs); the need for additional training programs for employees and operators (e.g. PVS); the need for modification of the HCl Plant BMP Plan; the need for modification of existing treatment and collection system works; and the need for new or additional treatment and collection system works. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the Report is not sufficient, then the Report shall be modified accordingly. The Permittee shall submit modifications to the

Engineering Report, if required, so that they are received by the Department no later than **thirty days** after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations made in the Engineering Report not later than **180 days** after the issuance of this Consent Order, unless the Department approves a request for an alternative schedule.

D. Immediately upon the effective date of this Consent Order, the Permittee shall cease unpermitted discharges of pollutants into waters of the State.

E. The Permittee shall comply with all other terms, conditions, and limitations of the Permit immediately upon the issuance of this Consent Order, as applicable.

F. After the issuance date of this Consent Order, the Permittee shall pay stipulated penalties for each day it fails to meet any of the written submittal milestone dates or satisfy any of the requirement dates contained in Paragraph C, above. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date **ninety days** after the required dates found in Paragraph C the Department reserves the right to file a new action against the Permittee.

G. Should violations continue to occur after **180 days** after the issuance of this Consent Order or as stipulated in Paragraph F above, then the Department may issue an additional order or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

H. Payment of stipulated penalties for violations of milestone dates under this Consent Order are due no later than the 28th day of the month following the month a milestone date was

not achieved. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

I. This Consent Order shall apply to and be binding upon the Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the Party represented, and to legally bind such Party.

J. Subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations cited in this Consent Order.

K. The Permittee is not relieved from any liability if it fails to comply with any applicable provision of this Consent Order.

L. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the

extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

M. The sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in other orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate. The Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

N. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

O. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

P. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

Q. Should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

R. Any modification of this Consent Order shall be agreed to in writing and signed by all Parties.

S. Except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligation to comply in the future with any permit.

Executed in duplicate, with each part being an original.

AM/NS Calvert LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

By:  By: _____

Its: **Robrecht Himpe**
President & Chief Executive Officer
AM/NS Calvert Its: _____

Date: January 16, 2018 Date: _____

Attachment 1: Effluent Violations

AM/NS Calvert LLC
NPDES Permit No. AL0080233
Attachment 1: Effluent Violations

Monitoring Period	Outfall	Parameter	Limit	Reported	Unit	Violation Type
February 2017	0011	Nickel, Total (As Ni)	2.38	10.8	mg/l	Monthly Average
February 2017	0011	Nickel, Total (As Ni)	3.98	22	mg/l	Maximum Daily
February 2017	0011	Nitrogen, Ammonia Total (As N)	24	29	mg/l	Maximum Daily
February 2017	0011	Solids, Total Suspended	31	119.0	mg/l	Monthly Average
February 2017	0011	Solids, Total Suspended	60	330.0	mg/l	Maximum Daily

Attachment 2: Sample Results

Attachment 3: Penalty Synopsis

AM/NS CALVERT LLC - Calvert Mill

1 AM/NS way,

Calvert, Alabama 36513

NPDES Permit number AL0080233

Laboratory Analysis Report

Parameters	Lined Pond	Drainage Ditch	DSN-004 (Pond 2)	DSN-009 outfall
pH	2.35	6.49	6.73	8.56
TSS	14 mg/L	8 mg/L	13 mg/L	15 mg/L
COD	31.6 mg/L	8.04mg/L	13.1 mg/L	18.5 mg/L
Oil & Grease	2.65 mg/L	4.06 mg/L	2.59 mg/L	2.56 mg/L
TDS	911 mg/L	105 mg/L	*	*
N+N	0.054 mg/L	0.14 mg/L	*	*
NH3	<MDL	<MDL	*	*
Total P	0.029 mg/L	0.058 mg/L	*	*
TKN	0.151 mg/L	0.094 mg/L	*	*
Chromium	1.15 mg/L	<MDL	<MDL	<MDL
Lead	0.0264 mg/L	0.000291 mg/L	0.000813 mg/L	0.00086 mg/L
Nickel	0.908 mg/L	<MDL	<MDL	<MDL
Zinc	40.7 mg/L	0.124 mg/L	<MDL	<MDL
Mercury	<MDL	<MDL	<MDL	<MDL
Iron	113 mg/L	0.525 mg/L	0.718 mg/L	0.827 mg/L
Aluminum	10.2 mg/L	0.419 mg/L	*	*
Copper	0.309 mg/L	<MDL	*	*
Arsenic	0.000416 mg/L	0.000576 mg/L	*	*
Cadmium	0.000734 mg/L	<MDL	*	*
Thallium	0.000211 mg/L	<MDL	*	*
Silver	<MDL	<MDL	*	*

Samples were collected on 08/30/2017

(*) - Parameter not sampled

(<MDL) - Below method detection limit

Attachment 3

AM/NS Calvert, Mobile County AL0080233

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to conduct BMP Inspections	1	\$ 1,000.00	\$ 1,000.00	\$ -
Failure to maintain BMP Plan on site	1	\$ 500.00	\$ 500.00	\$ -
Failure to Implement proper BMPs	2	\$ 5,000.00	\$ 5,000.00	\$ -
Unpermitted Discharge	1	\$ 12,500.00	\$ 12,500.00	\$ -
Failure to provide training for BMPs	1	\$ 2,000.00	\$ 2,000.00	\$ -
Effluent Violations	5	\$ 3,000.00	\$ -	\$ -
		\$24,000.00	\$21,000.00	\$0.00
		Total (A)	Total (B)	Total (C)
		Base Penalty Total		\$45,000.00
		[Total (A) + Total (B) + Total (C)]		
		Mitigating Factors (-)		
		Economic Benefit (+)		\$15,000.00
		Ability to Pay (-)		
		Other Factors (+/-)		
		INITIAL PENALTY		\$60,000.00
		Total Adjustments (+/-)		-\$10,000.00
		FINAL PENALTY		\$50,000.00

Additional Adjustments due to negotiations, receipt of additional information, or public comment

Mitigating Factors (-)

Economic Benefit (+)

Ability to Pay (-)

Other Factors (+/-)

Total Adjustments (+/-)

-\$10,000.00

-\$10,000.00

Footnotes

*See the "Stipulations" and "Contentions of the Department" portions of the Order for a detailed description of each violation and the penalty factors